

REPORT / RECOMMENDATION



To: Members of the Edina Housing & Redevelopment Authority **Agenda Item #:** HRA V

From: Chad A. Millner P.E., Director of Engineering

Action ☒

Discussion ☐

Information ☐

Date: March 4, 2014

Subject: Engineering Services – Construction Materials Testing Services for France Avenue Improvements

Action Requested:

Authorize City Manager to approve attached proposal for Engineering Services for Construction Materials Testing Services for France Avenue Improvements.

Information / Background:

This proposal is for construction materials testing services for the France Avenue Intersection Enhancements project that includes upgrading the intersections of 66th St, 70th St, and 76th St and France Ave along with providing sidewalk facilities along the easterly side of France Ave where they do not exist today.

This project is partially funded with a federal grant therefore it is required to perform Quality Control and Quality Assurance (QC/QA) testing in accordance with MnDOT's Schedule of Materials Control. This proposal will ensure the project meets all the material testing requirements.

The construction contract for this project was approved by City Council and the HRA on Jan. 7, 2014.

Staff recommends authorizing the City Manager to approve the attached proposal.

Attachments:

Proposal for Construction Materials Testing Services for France Avenue Improvements, Feb. 18, 2014

February 18, 2014

Proposal BL-14-00694

Chad Millner, PE
City of Edina
7450 Metro Boulevard
Edina, MN 55424-1394

Re: Proposal for Construction Materials Testing Services
France Avenue Improvements
France Avenue between 66th Street & 76th Street
S.P. 120-020-037
Edina, Minnesota

Dear Mr. Millner:

We appreciate the opportunity to submit this proposal for construction materials testing services for the France Avenue Improvement Project for the City of Edina.

Our Understanding of Project

This project will include improvements to the curb and gutter and sidewalks along France Avenue from 66th Street to 76th Street. Minor storm sewer and concrete pavement improvements will also be apart of this project. This project will also include bituminous patching and paving and constructing limestone retaining walls throughout the project.

This proposal is based on our review of the documents described below. If the project changes from the information provided in these documents, we may have to submit a revised scope of services and cost.

- Plans and Specifications dated October 21, 2013. (Digital).
- Discussions with Andrew Plowman with WSB & Associates, Inc. and Jamie Cynor with the City of Edina.

This project is a City of Edina project with Federal funding. Projects that are constructed with Federal funding are required to perform Quality Control and Quality Assurance (QC/QA) testing in accordance with the Minnesota Department of Transportation's (MnDOT's) Schedule of Materials Control. Personnel with MnDOT certifications must complete the monitoring and testing. Braun Intertec will perform the QA field testing on the project for the items listed in our scope and as shown on our construction materials testing cost estimate. The contractor will be responsible for performing all of the required QC testing and submitting all the documentation upon completion of the project. An audit of the project could be conducted upon completion by the funding agency. The audit may include reviewing tests and paperwork provided by your QC/QA representative.

The Braun Intertec Difference

At Braun Intertec we strive to not only provide the essential services required to meet the minimum project requirements, but to add measureable value in assisting the client to deliver a high quality project in a timely manner. We recognize the need to provide more than solely field testing on projects in order to verify that the project requirements have been met and that the project will be audited successfully. To reach this end ***Braun Intertec has the largest pool of experienced certified technicians in Minnesota, knowledgeable project managers specialized in Federal, State, and State-Aid projects, and a culture of customer service. This allows us to meet and exceed client expectations, verify complete and competent testing is performed, and provide a final report which includes the information necessary to successfully complete a project audit is produced.*** Braun Intertec has a dedicated team of expert certified staff with the experience and knowledge necessary to perform and verify compliance with the Schedule of Materials Control.

Experienced Personnel

At Braun Intertec we have a group of knowledgeable staff who understand how to perform the necessary tests and are MnDOT certified in each specialized field. Our extensive pool of certified employees and numerous office locations allows us to be responsive to project needs and flexible regarding project scheduling. Technicians in our metro offices have the following MnDOT certifications:

- Aggregate Production
- Grading & Base I
- Grading & Base II
- Concrete Field I
- Concrete Field II
- Concrete Plant I
- Concrete Plant II
- Bituminous Plant I
- Bituminous Plant II

Knowledgeable Project Managers

We have a number of experienced project managers who specialize in State-Aid and Federal Projects. Their knowledge of the material certification process, MnDOT's Schedule of Material Control, required documentation, and the audit process is a valuable resource toward meeting project requirements. Our project managers are responsible for communicating test results quickly, submitting required documentation which include the preliminary and final grading and base reports, weekly concrete reports, and coordinating Independent Assurance requirements. As a result of past work our project managers have a working relationship with MnDOT staff and are able to get timely responses to questions and resolve issues to keep the project on schedule. Their specialized expertise is vital to the successful completion of the project and verifying the requirements of the project are met.

Accredited Laboratory

Braun Intertec is one of the few independent testing companies that is accredited by AASHTO Materials Reference Laboratory (AMRL) in the metro area. With our accredited laboratory only eight miles away from the project site we propose to perform the laboratory tests at our corporate office location in Bloomington. With Braun Intertec's Metro Material Laboratory often working twenty-four hours a day laboratory test results are delivered in a timely and accurate manner to keep up with the project schedule and demands.

Customer Service

On any project, communication and establishing expectations are key to achieving customer satisfaction. To that end, our testers and project managers communicate regularly with the inspectors and project engineers. In our experience it is important to communicate material certification and testing on an ongoing basis. It is vital that information be quickly communicated to verify that all of the required testing has been completed prior to that portion of the work being completed to avoid materials exceptions at the end of the project. Braun Intertec also uses advanced technology, such as our cell phone and laptop based Metafield® program, to improve the material testing communication process. Using these tools we are able to record and report testing information quickly back to our office so that the information can be reviewed and sent to the client in a timely manner. This process allows us to provide the client with the most current information as to our compliance with the MnDOT's material certification program and project requirements.

Final Materials Certification Report

As the project progresses, our experienced transportation project managers compile the project documentation into a final report designed to meet the requirements of an audit. Braun Intertec has been successfully audited numerous times on state and federally funded projects in the past and received positive feedback regarding our process. Our experience with these audits has led us to develop the format for our final report in order to provide a clear and simple document that provides the necessary information. ***In our experience, having our final report on file reduces the amount of time needed to satisfy the audit requirements, presents all the materials information in a single well organized document, and minimizes any audit related costs or potential loss of funding for the owner.*** As documented in the yearly audit results failure to adequately complete or document testing and material certification can result in significant funds being withheld. Our report includes the following items:

- Copies of Certification Cards for Braun Intertec employees conducting testing on this project.
- Completed MnDOT Materials Certification Exceptions Summary for items tested by Braun Intertec.
- Completed Preliminary and Final Grading and Base Report.
- Completed IA Report
- All Moisture and Gradation test reports.
- Concrete mix designs.
- Weekly concrete reports.
- Concrete compressive strength results.

- Bituminous mix designs.
- Bituminous verification test results.
- Bituminous Contractor's summary sheets.
- Completed Density Incentive/Disincentive worksheets.
- Copies of concrete and bituminous plant certifications.

Scope of Services

Testing services will be performed on an on-call, as-needed basis as requested and scheduled by you or your onsite project personnel. Based on our understanding of the project, we propose the following services:

Soils

As specified in the project documents, we have assumed the compaction requirement for the soil portion of this project to follow MnDOT's "Quality Compaction" Specification. The soil testing for this project will consist of the following:

- Perform moisture content tests at time of compaction on aggregate base materials.
- Perform gradation tests on aggregate base materials.
- Assemble the preliminary and final grading and base report along with assembling the random sampling locations report for the aggregate base according to MnDOT Specifications.

Concrete

The concrete testing for this project will consist of the following:

- Perform slump, temperature and air content tests on the plastic concrete prior to placement.
- Cast 4-inch by 8-inch cylinders for compressive strength testing.
- Cast flexural strength beams for concrete pavement placements.
- Laboratory compressive and flexural strength testing of cylinders and/or beams.
- Develop the Weekly Concrete Reports for the Project Engineer's review and their submittal to MnDOT's Concrete Office.

Bituminous

The bituminous testing and monitoring for this project will consist of the following:

- Collect one verification sample per mix per day of production. Perform quality assurance tests on these samples which include rice specific gravity, asphalt content, extracted aggregate gradation, gyratory density, coarse aggregate angularity, fine aggregate angularity, and thickness and density of pavement cores.
- Randomly determine and mark pavement core locations.
- Observe the contractor coring and core testing in accordance with MnDOT's specifications, which include watching quality control personnel weigh the cores at their laboratory.

Reporting and Project Management

Test results will be issued for the project as the various tasks are performed. If, at any time, there are failing tests or we observe construction processes which do not appear to be in accordance with the plans and specifications or MnDOT's Schedule of Materials Control, we will notify the engineer's representative and any others that we are directed to notify.

MnDOT Independent Assurance (IA)

On Federal funded projects, MnDOT requires their IA personnel observe the QC/QA representative performing soil, concrete, and bituminous tests. We will schedule the IA visits as required.

Scheduling Assumptions

Based on our understanding of the project and the available project information, we assume the work for this phase of the project will proceed according to the following schedules:

- Bituminous paving will be completed in two days for this project assuming the contractor paves 300 tons a day.
- Fifty-four sets of concrete tests are assumed to complete this project. Thirty sets for curb and gutter, sixteen sets for sidewalks, driveways, and pedestrian ramps, and eight sets for concrete pavement.
- We assume MnDOT's Metro Inspections Group is performing the Concrete and Bituminous Batch Plant observations and testing for this project.

If the pace of construction is different than described above, this proposal should be revised.

Cost

We will furnish the services described herein for an estimated fee of **\$24,623**. **Our estimated costs are based on industry averages for construction production. Depending on the contractor's performance our costs may be reduced or slightly higher than estimated.** For the limits of this proposal we have estimated the testing rate and contractor's production based off our experience and have provided what we feel is a fair and realistic budget estimate. A tabulation showing our estimated hourly and/or unit rates associated with our proposed scope of services is also attached.

We would be happy to meet with you to discuss our proposed scope of services further, clarify the various scope components, and discuss how the scope may be adjusted to meet your projects requirements.

Additional Services and Overtime

It is difficult to estimate all of the services, and the quantity of each service, that will be required for any project. Our services are also directly controlled by the schedule and performance of others. For these reasons, our actual hourly or unit quantities and associated fees may vary from those reported herein.

If the number of hours or units ultimately required exceed those assumed for purposes of this proposal, they will be invoiced at the hourly or unit rates shown in the attached tabulation. If services are ultimately required that have not been identified or described herein, they will be invoiced in accordance with our current Schedule of Charges. Prior to exceeding our estimated fees, we will update you regarding the progress of our work. Fees associated with additional services will be summarized in a Change Order and submitted to you for review and authorization.

This proposal was developed with the understanding that the scope of services defined herein will be required and requested during our normal work hours of 7:00 am to 4:00 pm, Monday through Friday. Services that we are asked to provide to meet the project requirements or a contractor's construction schedule outside our normal work hours will be invoiced using an overtime rate factor. The factor for services provided outside our normal work hours or on Saturday will be 1.25 times the normal hourly rate for the service provided. The factor for services provided on Sunday or legal holidays will be 1.5 times the normal hourly rate for the service provided.

General Remarks

We appreciate the opportunity to present this proposal to you. It is provided in duplicate so the original can be retained for your records and the ***copy can be signed and returned to us. Please return the signed copy in its entirety.***

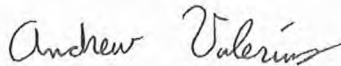
The proposed fee is based on the scope of services described and the assumptions that our services will be authorized within 30 days and that others will not delay us beyond our proposed schedule.

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

To have questions answered or schedule a time to meet and discuss our approach to this project further, please call Andrew Valerius at 952.995.2242.

Sincerely,

BRAUN INTERTEC CORPORATION



Andrew M. Valerius
Associate Principal- Transportation Project Manager




Joshua J. Van Abel, PE
Principal- Senior Engineer

Attachments:

Table 1. Estimated Costs
General Conditions-CMT (9/1/13)

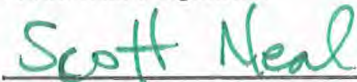
c: Jamie Cynor- City of Edina

The proposal is accepted, and you are authorized to proceed.




Authorizer's Firm

Authorizer's Signature



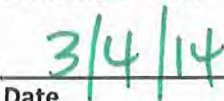
Authorizer's Name (please print or type)

Authorizer's Name (please print or type)



Authorizer's Title

Authorizer's Title



Date

Date

COST ESTIMATE

BL-14-00694

France Ave., Impts. SP 120-020-037

City of Edina
Chad Millner
7450 Metro Boulevard
Edina, MN 55424-1394

Service Desc: Construction Materials Testing

Work Location: France Ave., 66 St. to 76 St.
Edina, MN
Estimator : Andrew M Valerius
Client Reference : Eng 13-5, BA 404

Description:	Quantity:	Units:	Unit Price:	Extension:
Phase:Construction Materials Testing				
Start Date: 5/15/2014 End Date:12/31/2014				
Task: Soil Observations & Testing				
Sample pick-up	6.00	Hours	61.00	366.00
4.00 Trips at	1.50	Hours per Trip		
Field Moisture Testing	3.00	Hours	69.00	207.00
1.00 Trip at	3.00	Hours per Trip		
Sieve analysis with 200 wash (ASTM C 136 and C 117), per sample	3.00	Tests	101.00	303.00
Topsoil testing, MN/DOT 3877A (without nutrients), per sample	2.00	Tests	247.00	494.00
Asphalt Content (ASTM D 2172/6307), per sample	1.00	Test	127.00	127.00
Trip charge, per trip	4.00	Trips	20.00	80.00
Soil Observations & Testing Total:				1,577.00
Task: Concrete Observations & Testing				
Concrete Testing	121.50	Hours	69.00	8,383.50
Concrete Pavement	8.00	Trips at	2.25	Hours per Trip
Sidewalks	16.00	Trips at	2.25	Hours per Trip
Curb & Gutter	30.00	Trips at	2.25	Hours per Trip
Concrete Cylinder Pick up	27.00	Hours	61.00	1,647.00
Compressive strength of concrete cylinders (ASTM C 39), per specimen	32.00	Tests	21.00	672.00
Concrete Pavement	8.00	Sets of	4.00	Cylinders/Set
Flexural strength of beams (ASTM C 78 and ASTM C 293), per specimen	16.00	Each	98.00	1,568.00
Compressive strength of 4 x 8" concrete cylinders (ASTM C 39), per unit	138.00	Tests	21.00	2,898.00
Sidewalks	16.00	Sets of	3.00	Cylinders/Set
Curb & Gutter	30.00	Sets of	3.00	Cylinders/Set
Trip charge, per trip	81.00	Trips	20.00	1,620.00
Concrete Observations & Testing Total:				16,788.50
Task: Pavement Observations & Testing				
Split Verification Sample with Contractor	4.00	Hour	85.00	340.00
2.00 Trips at	2.00	Hours per Trip		
Mark and Observe Contractor Coring	4.00	Hour	85.00	340.00
1.00 Trip at	4.00	Hours per Trip		
Rice specific gravity (ASTM D 2041), per sample	2.00	Tests	70.00	140.00
Asphalt Content (ASTM D 2172/6307), per sample	2.00	Tests	127.00	254.00
Extracted aggregate gradation (ASTM D 5444), per sample	2.00	Tests	91.00	182.00

COST ESTIMATE

BL-14-00694

Description:	Quantity:	Units:	Unit Price:	Extension:
Thickness and density of pavement core (ASTM D 2726), per specimen	4.00	Tests	43.00	172.00
Gyratory gravity (AASHTO T312), per sample	2.00	Tests	158.00	316.00
Percent crushed (ASTM D5821), per sample	2.00	Tests	68.00	136.00
Fine Aggregate Angularity (ASTM C1252), per sample	2.00	Tests	64.00	128.00
Trip charge, per trip	3.00	Trips	20.00	60.00
Pavement Observations & Testing Total:				2,068.00
Task: Engineering & Project Management				
Project Manager	22.00	Hours	118.00	2,596.00
Senior Project Manager	2.00	Hours	145.00	290.00
Project Assistant	10.50	Hours	67.00	703.50
Final Report	1.00	Report	600.00	600.00
Engineering & Project Management Total:				4,189.50
Construction Materials Testing Total:				24,623.00
Project Total:				24,623.00

General Conditions

Construction Material Testing and Special Inspections

BRAUN
INTERTEC

Section 1: Our Agreement

1.1 Our agreement ("Agreement") with you consists of these General Conditions and the accompanying written proposal or authorization. This Agreement is our entire agreement. It supersedes prior agreements. It may be modified only in a writing signed by us, making specific reference to the provision modified.

1.2 The words "you," "we," "us," and "our" include officers, employees, and subcontractors.

1.3 In the event you use a purchase order or other form to authorize our services, any conflicting or additional terms are not part of our Agreement. Directing us to start work prior to execution of this Agreement constitutes your acceptance. If, however, mutually acceptable terms cannot be established, we have the right to withdraw our proposal without liability to you or others, and you will compensate us for services already rendered.

Section 2: Our Responsibilities

2.1 We will provide the services specifically described in our Agreement with you. You agree that we are not responsible for services that are not fairly included in our specific undertaking. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

2.2 In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction.

2.3 We will reference our field observations and sampling to available reference points, but we will not survey, set, or check the accuracy of those points unless we accept that duty in writing. Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and, further, that site conditions may change over time.

2.4 Our duties do not include supervising your contractors or commenting on, overseeing, or providing the means and methods of their work, unless we accept such duties in writing. We will not be responsible for the failure of your contractors to perform in accordance with their undertakings, and the providing of our services will not relieve others of their responsibilities to you or to others.

2.5 We will provide a health and safety program for our employees, but we will not be responsible for contractor, job, or site health or safety unless we accept that duty in writing.

2.6 You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our employees are authorized by you to refuse to work under conditions that may be unsafe.

2.7 Estimates of our fees or other project costs will be based on information available to us and on our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

Section 3: Your Responsibilities

3.1 You will provide us with prior geotechnical and other reports, specifications, plans, and information to which you have access about the site. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed our work.

3.2 You will provide access to the site. In the course of our work some site damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site. We have not included the cost of restoration of normal damage in the estimated charges.

3.3 If we notify you that radiographic or gamma ray equipment or other nuclear testing or measuring device will be used, you will be responsible for the cooperation of your employees and your contractors in observing all radiation safety standards.

3.4 You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials at the work site. If we observe or suspect the presence of contaminants not anticipated in our Agreement, we may terminate our work without liability to you or to others, and we will be paid for the services we have provided.

3.5 The time our field personnel spend on the job site depends upon the scheduling of the work we are observing or testing. You agree that any changes in scheduling may result in additional costs and agree to pay for those services at the rates listed in our cost estimate.

3.6 You agree to include us as an indemnified party in your contracts, if any, for work by others on the project, protecting us to the same degree as you are protected. You agree to list us as an Additional Insured under your liability insurance policies and to require subrogation be waived against us and that we will be added as an Additional Insured on all policies of insurance, including any policies required of your contractors or subcontractors, covering any construction or development activities to be performed on the project site.

Section 4: Reports and Records

4.1 Unless you request otherwise, we will provide our report(s) in an electronic format.

4.2 Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property but are subject to a license to you for your use in the related project for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. You agree to indemnify and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use. At your request, we will provide endorsements of our reports or letters of reliance, but only if the recipients agree to be bound by the terms of our Agreement with you and only if we are paid the administrative fee stated in our then current Schedule of Charges.

4.3 Because electronic documents may be modified intentionally or inadvertently, you agree that we will not be liable for damages resulting from change in an electronic document occurring after we transmit it to you.

4.4 If you do not pay for our services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

4.5 Electronic data, reports, photographs, samples and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

Section 5: Compensation

5.1 You will pay for services as agreed upon or according to our then current Schedule of Charges if there is no other written agreement as to price. An estimated cost is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

5.2 You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices on receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

5.3 If you direct us to invoice another, we will do so, but you agree to be responsible for our compensation unless you provide us with that person's written acceptance of all terms of our Agreement and we agree to extend credit to that person and to release you.

5.4 Your obligation to pay for our services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of lawsuit in which we are not involved, your successful completion of a project, receipt of payment from another, or any other event. No retainage will be withheld.

5.5 If you do not pay us within 60 days of invoice date, you agree to reimburse our expenses, including but not limited to attorney fees, staff time, and other costs of collection.

5.6 You agree to compensate us in accordance with our fee schedule if we are asked or required to respond to legal process arising out of a proceeding related to the project and as to which we are not a party.

5.7 If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work change, or if changed labor union conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice and we will receive an equitable adjustment of our compensation. If you and we do not reach agreement on such compensation within 30 days of our written application, we may terminate without liability to you or others.

5.8 If you fail to pay us within 60 days following invoice date, we may consider the default a total breach of our Agreement and, at our option, terminate our duties without liability to you or to others.

5.9 In consideration of our providing insurance to cover claims made by you, you hereby waive any right of offset as to fees otherwise due us.

Section 6: Disputes, Damage, and Risk Allocation

6.1 Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s) attended by each party's representative(s) empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

6.2 Neither of us will be liable for special, incidental, consequential, or punitive damages, including but not limited to those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, or the cost of capital.

6.3 We will not be liable for damages unless suit is commenced within two years of the date of injury or loss or within two years of the date of substantial completion of our services, whichever is earlier. We will not be liable unless you have notified us of the discovery of the claimed breach of contract, negligent act, or omission within 30 days of the date of discovery and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages. You agree not to make a claim against us unless you have provided us at least 30 days prior to the institution of any legal proceeding against us with a written certificate executed by an appropriately licensed professional specifying and certifying each and every act or omission that you contend constitutes a violation of the standard of care governing our professional services.

6.4 For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed the fee paid for our services or \$50,000, whichever is greater. If you are unwilling to accept this allocation of risk, we will increase our aggregate liability to \$100,000 provided that, within 10 days of the date of our Agreement, you provide payment in an amount that will increase our fees by 10%, but not less than \$500, to compensate us for the greater risk undertaken. This increased fee is not the purchase of insurance.

6.5 You agree to indemnify us from all liability to others in excess of the risk allocation stated above and to insure this obligation.

6.6 The prevailing party in any action relating to this Agreement shall be entitled to recover

its costs and expenses, including reasonable attorney fees, staff time, and expert witness fees.

6.7 The law of the state in which our servicing office is located will govern all disputes. Each of us waives trial by jury. No officer or employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not to make a claim against individual employees.

Section 7: General Indemnification

7.1 We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold us harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.

7.2 To the extent it may be necessary to indemnify either of us under Section 7.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

Section 8: Miscellaneous Provisions

8.1 We will provide a certificate of insurance to you upon request. Any claim as an Additional Insured shall be limited to losses caused by our sole negligence.

8.2 You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

8.3 Neither of us will assign nor transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

8.4 Our Agreement may be terminated early only in writing. We will receive an equitable adjustment of our compensation in the event of early termination.

8.5 If a provision of this Agreement is invalid or illegal, all other provisions shall remain in full force and effect.